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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,305	05/06/2002	Craig B. Labrie	TRM DV2539	8328

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MANCHESTER, NH 03101

EXAMINER

ENGLISH, PETER C

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/786,305	Applicant(s) LABRIE ET AL.	
	Examiner Peter C. English	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,22-39 and 42-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,22-39 and 42-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The corrected drawing Figs. 22-29 and 31-34 filed on 07 June 2004 have been approved.

2. The drawings are objected to because:

Fig. 15 appears twice, once on sheet 11 and again on sheet 12. Since the drawing sheets contain sheet numbers, corrected drawings sheets with corrected sheet numbers will be necessary to correct the duplicated figure.

In Fig. 26, the tear seams 316 do not resemble one another (i.e., the upper tear seam is much wider than the lower one and resembles a hinge rather than a tear seam) and further do not resemble the tear seam 316 shown in Fig. 28 (i.e., they lack the groove shown in Fig. 28); and

3. Corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

4. The specification is objected to because:

At line 1 of the paragraph beginning at page 1, line 4, "This is" should be "This application is the National Stage of International Application No. PCT/US99/13592, which is".

At line 2 of the paragraph beginning at page 1, line 4, "Patent No. 5,941,558," should be inserted before "which".

The amendments made at line 2 of the paragraphs beginning at page 7, line 24 and page 9, line 5 are improper because brackets should not be used in making amendments. It is unclear what amendments applicant intends to make.

Appropriate correction is required.

5. The specification is objected to because the detailed description of the drawings skips from a description of Figs. 1-17 (which concludes on page 23) to a description of Figs. 31-34 (pages 23-26), then back to a description of Figs. 18-30 (pages 26-36). This organization of the

Art Unit: 3616

description is confusing. In order to correct this problem it will be necessary for applicant to make the necessary amendments to the specification, using the proper amendment procedures.

### ***Claim Rejections - 35 USC § 112***

6. Claims 1 and 22-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, at line 9, "the air bag dispenser" lacks proper antecedent basis. The examiner suggests: at lines 9, 10 and 11, change "dispenser" to "canister".

In claim 36, at line 9, "the outer surface" is indefinite because more than one outer surface has been previously recited. The examiner suggests: at line 9, insert "thereof" after "outer surface".

### ***Double Patenting***

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Claims 43, 44, 45, 46 and 47 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 16, 17, 18, 23 and 24, respectively, of prior U.S. Patent No. 6,203,056. This is a double patenting rejection.

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

Art Unit: 3616

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claim 42 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 18 and 38 of U.S. Patent No. 5,941,558 in view of DiSalvo et al. (US 4,893,833). Claims 18 and 38 of U.S. Patent No. 5,941,558 do not recite a support structure to which the reaction plate is connected. DiSalvo et al. teaches a vehicle panel 12 provided with a support structure 36 to which a reaction plate 18 is connected. From this teaching of DiSalvo et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify claims 18 and 38 of U.S. Patent No. 5,941,558 by providing the panel with support structure to which the reaction plate is connected in order to provide a strong and secure mounting for the reaction plate. With respect to claim 38 of U.S. Patent No. 5,941,558, it would have been obvious to delete the limitation that the frangible edge defines the entire door perimeter because it is well settled that a modification involving a mere elimination of an element/limitation is within the level of ordinary skill in the art.

11. Claim 42 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 19 of U.S. Patent No. 6,203,056. Claim 19 of U.S. Patent No. 6,203,056 differs from claim 42 of the instant application in that claim 19 recites the additional limitation that the reaction plate is fastened to the door by a screw threaded into a boss extending integrally from the door. It would have been obvious to delete this additional

Art Unit: 3616

limitation from claim 19 of U.S. Patent No. 6,203,056 because it is well settled that a modification involving a mere elimination of an element/limitation is within the level of ordinary skill in the art.

*Response to Arguments*

12. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

*Allowable Subject Matter*

13. Claims 1 and 22-39 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

14. Claim 42 would be allowable if a terminal disclaimer is filed to overcome the double patenting rejections.


*Conclusion*

15. This action is NOT made final because of the new grounds of rejection.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter C. English whose telephone number is 703-308-1377. The examiner can normally be reached on Monday through Thursday (7:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

  
Peter C. English  
Primary Examiner 6/28/04  
Art Unit 3616

pe  
28 June 2004